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| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number (Optional) 200309108-1 | |
| <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>07/28/06</u></p> <p>Signature <u>Mary Elias</u></p> <p>Typed or printed name <u>Mary Elias</u></p> | | Application Number 10/685,990 | Filed 10/14/2003 |
| | | <p>First Named Inventor Carlos A. Bonilla</p> | |
| | | Art Unit 2863 | Examiner Lau, Tung S. |

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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Registration number _____

attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

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408-938-9060

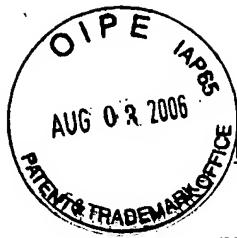
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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required. see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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REMARKS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action dated May 30, 2006, Applicant respectfully requests a review of the final rejection in the above-identified application. Applicant respectfully submits that the Examiner's rejections of the claims are improper. Claims 1-7 and 14-20 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. patent 6,317,845 by Meyer et al. (referred to hereinafter as "Meyer"). Claims 8-13 are rejected under 35 U.S.C. §102(a) as being anticipated by Boudnik et al. (referred to hereinafter as "Boudnik").

KEY CLAIM LIMITATIONS THAT ARE NOT MET BY THE CITED REFERENCES

Meyer does not teach or suggest "storing status information of a software test running on a test system to a common information point; automatically reinstalling an operating system on said test system; querying said common information point to determine said status information," as recited by Claim 1. Meyer does not teach or suggest similar limitations recited by Claim 14. Boudnik does not teach or suggest, "installing test driver software on a plurality of test systems; providing a mapping of a plurality of virtual test system names to real test system names to said test driver software," as recited by Claim 8.

Claim Limitations Having To Do With Storing... Automatically Reinstalling ... Querying... Are Not Met By The Cited Reference

At Col. 2 lines 25-28 of the background section, Meyer states that the problem with prior art disaster recovery is that the bootable floppy disks used for disaster recovery have relatively low capacity. Meyer also states at Col. 2 lines 12-16 that another problem with conventional disaster recovery is that users are required to remember additional commands and that there is limited documentation and on-line help.

Meyer solves the problem of a bootable floppy disk having limited capacity by teaching a way for a user to restart a computer by manually inserting a removable high capacity disk into the computer. Some places where Meyer teaches a user manually restarting a computer by inserting a removable high capacity disk are the abstract, Figure 2 step 104, Col. 3 lines 23-24, Col. 10 lines 60-61, and Col. 12 lines 22-32. Meyer solves the problem of requiring users to remember additional commands and limited documentation and on-line help by

incorporating a general user interface on his removable high capacity disk that guides the user through the recovery process. Some other portions where Meyer teaches the GUI to prompt the users are Col. 13 lines 8-11, Figure 2 steps 108 and 112, Col. 12 lines 57-58, and Col. 13 lines 37-39.

Meyer does not teach or suggest, "storing status information of a software test running on a test system to a common information point," as recited by Claim 1. Meyer teaches "recovery" not "testing." Meyer does not teach anything about "status information of a software test running on a test system" let alone using a "common information point." Since Meyer teaches recovery instead of testing, Meyer would have no need for teaching a "common information point."

The Office Action asserts that Meyer teaches "storing status information of a software test running on a test system to a common information point" in the abstract. Applicant is uncertain what in Meyer's abstract the Office Action is referring to. For the sake of argument, Applicant shall assume that the Office Action is referring to the "suite of software recovery software." However, this does not teach "storing," "a software test," or "a common information point," let alone teach or suggest "storing status information of a software test running on a test system to a common information point." The Office Action also asserted that Meyer teaches "storing status information of a software test running on a test system to a common information point" at unit 108 of FIG. 2. Meyer discusses unit 108 in the second paragraph of Col. 13. However, the second paragraph of Col. 13 in Meyer discusses recovery applications but fails to teach or suggest "software test," "common information point," and "storing" let alone teach or suggest "storing status information of a software test running on a test system to a common information point."

Meyer does not teach or suggest, "automatically reinstalling an operating system on said test system," as recited by Claim 1. In fact, Meyer teaches away from "automatically reinstalling an operating system" (emphasis added) since Meyer requires user involvement in order to "restore" an operating system. As already stated Meyer requires the use of a GUI so that users are not required to remember additional commands and to address the problem of limited documentation and on-line help.

The Office Action asserts that Meyer teaches “automatically reinstalling an operating system on said test system,” in the abstract. However, Meyer makes no mention of a test system in the abstract. Further, Meyer requires that a user manually insert a removable high capacity disk into the computer and manually restart the computer. The Office Action also asserts that Meyer teaches “automatically reinstalling an operating system on said test system,” with unit 106 depicted in FIG. 2. Meyer discusses unit 106 at Col. 12 lines 20-47. In Col. 12 lines 20-47 Meyer states several times that the user inserts the high capacity disk and the user restarts the computer.

Meyer does not teach or suggest, “querying said common information point to determine said status information,” as recited by Claim 1. Since Meyer does not teach a “common information point” or “status information” then Meyer cannot teach or suggest “querying said common information point to determine said status information.”

The Office Action asserts that Meyer teaches “querying said common information point to determine said status information” in the abstract and with unit 110 of FIG. 2. However, as already explained herein Meyer fails to teach “a common information point” in the abstract. Meyer discusses step 110 at Col. 13 lines 37-40. However, Col. 13 lines 37-40 say nothing about “querying said common information point to determine said status information.” Further, since Meyer fails to teach “storing status information of a software test running on a test system to a common information point” Meyer cannot teach or suggest “querying said common information point to determine said status information.”

Claim Limitations Having To Do With Installing...Providing... Are Not Met By The Cited Reference

Boudnik does not teach or suggest, “installing test driver software on a plurality of test systems,” as recited by Claim 8. For example, referring to paragraph 0054 Boudnik teaches locating “an available test system ... to execute each of the test execution requests 116a-116c” and therefore teaches away from “installing test driver software on a plurality of test systems.”

Although Boudnik teaches the use of a Java virtual machine, Boudnik does not teach “providing a mapping of a plurality of virtual test system names to

real test system names to said test driver software," as recited by Claim 8. Boudnik only teaches the use of one virtual machine, a Java virtual machine. Further, since Boudnik teaches locating "an available test system" rather than "installing test driver software...," Boudnik would have no motivation to teach a "...mapping...," as recited by Claim 8. Therefore Boudnik does not teach "providing a mapping of a plurality of virtual test system names to real test system names to said test driver software," as recited by Claim 8.

The Office Action asserts that Boudnik teaches "providing a mapping of a plurality of virtual test system names to real test system names to said test driver software" at FIG. 6, Fig. 5, unit 500, FIG. 8, unit 812. However, FIG. 6 depicts a post mortem object which includes test suite names 600, work directory name 602, result directory name 604, point of execution 606, and system name 608. Among other things, there is nothing in FIG. 6 about virtual test system names. Therefore, FIG. 6 cannot teach or suggest "providing a mapping of a plurality of virtual test system names to real test system names to said test driver software." FIG. 5 depicts a test system 114 that includes an agent process and a test harness 502. The agent process 120 communicates with a post mortem object 508 and a system controller 108. However, FIG. 5 depicts nothing about a mapping let alone anything that teaches or suggests "providing a mapping of a plurality of virtual test system names to real test system names to said test driver software." Unit 812 of FIG. 8 is discussed in paragraph 0084. However, there is nothing in paragraph 0084, which discusses operation 812, about "providing a mapping of a plurality of virtual test system names to real test system names to said test driver software."

In the response to arguments section, the Office Action also cited Fig. 4 and Fig. 9 of Boudnik. Paragraph 0065 states concerning FIG. 4 "The test configuration 400 includes a test suite comprising a test list 402 having a plurality of individual tests 404." Therefore FIG. 4 does not teach or suggest "mapping of a plurality of virtual test system names to real test system names." In regards to operation 902, paragraph 0090 of Boudnik states, "In operation 902, the agent process refers to the JavaSpace of the system.....JavaSpaces technology provides developers with the ability to create and store objects with persistence, which allows for process integrity." Therefore, paragraph 0090 does not teach or

suggest “mapping of a plurality of virtual test system names to real test system names...” either.

For the foregoing reasons, independent Claim 1 should be patentable over Meyer in that Meyer is missing essential elements, “storing... automatically reinstalling...querying... resuming...,” and therefore the anticipation rejection of Claim 1 under §102(b) is improper and should be reversed. For similar reasons, independent Claim 14 should be patentable over Meyer. For the foregoing reasons independent Claim 8 should be patentable over Boudnik in that Boudnik is missing essential elements, “installing... providing a mapping...,” and therefore the anticipation rejection of independent Claim 8 under §102(a) is improper and should be reversed. Claims 2-7 depend on Claim 1. Claims 9-13 depend on Claim 8. Claims 15-20 depend on Claim 14. These dependent claims include all of the limitations of their respective independent claims. Therefore, the dependent claims should be patentable for at least the reasons that their respective independent claims are patentable.